

REMARKS

The above-referenced patent application has been reviewed in light of the Office Action referenced above. Reconsideration of the above-referenced patent application in view of the following remarks is respectfully requested.

Claims 1-20 are pending in the application. Claims 1-2, 4-6, and 9-20 have been amended. Claims 7 and 8 have been cancelled. New claims 21-40 have been added. The amendment is fully supported by the original disclosure. No new matter has been introduced. The above amendments were, in many instances, made to clarify Assignee's claims and do not narrow the scope of the amended claims. Furthermore, in many instances, the above amendments broaden the literal scope of claims and/or claim elements. In light of this, Assignee asserts that no prosecution history estoppel should result from the above amendments, in many instances.

Claim objections

The Examiner has objected to the claim language in claims 1 and 12 reciting both "with" and "comprising" in the preamble as being unclear.

In response, Assignee has amended claims 1 and 12.

The Examiner has also objected to the claim language in claim 4 reciting that the "point light source includes a light emitting diode" as being unclear as implying that there may be more than one light source.

Applicant respectfully submits that the Examiner has not established that claim 4 must be limited to a single light source, therefore no amendment is necessary. Assignee has amended claim 4 to replace "includes" with "comprises"; however, this amendment does not narrow the claim and was not made in response to the Examiner's rejection.

Claim rejections

The Examiner has rejected claims 10, 11, 19 and 20 for improperly reciting a use without any positive steps under 35 U.S.C. 112 and 101.

In response, Assignee has amended claims 10, 11, 19 and 20.

Allowable Subject Matter

Claims 8 and 17 have been deemed allowable by the Examiner. The Applicant thanks the Examiner for this allowance.

In response, Assignee has amended claim 1 to be of similar scope to claim 8 (now cancelled).

Claims 2-6 and 9-11 are similarly allowable, at least on the same or similar basis as claim 1.

Claim rejections - 35 USC §102(b)

Claims 1-4, 6, 12-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Roussel (US Patent 4,283,146).

It is noted that the Examiner can establish anticipation only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131.01. It is asserted that the Examiner has not established that Roussel meets this requirement.

As stated above, Assignee believes claims 1-6 and 9-11 are now in condition for allowance, so these claims will not be discussed further herein.

Assignee respectfully submits the Examiner has not established that Roussel discloses all of the elements of independent claim 12. For example, Examiner has not established that Roussel discloses "*a point light source, disposed at a first end of said holder; a photodetector, disposed at a second end of said holder opposite said first end, said first end and said second end formed on the same side of said holder*" (emphasis added). In the present Office Action, the Examiner asserts that Roussel discloses "a holder 20 for holding said point light source at a first end (the first end being the left half of the holder 20 in Figures 1 and 2), and holding said photo detector at a second end (the second end being the right half of the holder 20 in Figures 1 and 2), said first end and said second end formed on the same side of said holder 20 (see Figure 1)". See pages 4-5 of the Office Action. However, Assignee submits that the Examiner has not established that Roussel specifically discloses "*a point light source, disposed at a first end of said holder; a photodetector, disposed at a second end of said holder opposite said first end*" or that "*said first end and said second end formed on the same side of said holder*" as recited in claim 1. Specifically, the Examiner has not established that the item 20 of Roussel specifically discloses first and second "ends" and a "side" as recited in claim 1. In the absence of the Examiner pointing to such a disclosure in Roussel, Assignee requests that the rejection be

withdrawn as the Examiner has failed to establish that Roussel discloses the identical invention as is required for anticipation. See MPEP § 2131.

Claims 13-40 are similarly not anticipated, at least on the same or similar basis as claim 12.

Claim rejections - 35 USC §103(a)

Claims 5, 7, 9-10, 14, 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roussel (US Patent 4,283,146) in view of Phillips et al (US Patent 5,059,394).

Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roussel (US Patent 4,283,146) in view of Phillips et al (US Patent 5,059,394) and further in view of Markart et al (US Patent 5,281,395).

As stated above, Assignee believes claims 1-6 and 9-11 are now in condition for allowance, so these claims will not be discussed further herein.

In response to the rejection, Assignee respectfully submits that claims 13-40 are similarly not obvious, at least on the same or similar basis as claim 12 as set forth above with respect to the anticipation rejection in view of Roussel.

It is noted that claimed subject matter may be patentably distinguished from the cited references for additional reasons; however, the foregoing is believed to be sufficient. Likewise, it is noted that the Assignee's failure to comment directly upon any of the positions asserted by the Examiner in the office action does not indicate agreement or acquiescence with those asserted positions.

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Conclusion

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

Invitation for a Telephone Interview

The Examiner is invited to call the undersigned attorney, James J. Lynch, at (503)439-6500 if there remains any issue with allowance.

Additional Fees

Any fees or extensions of time believed to be due in connection with this amendment are enclosed herein; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-3703.

Respectfully submitted,

Berkeley Law and Technology Group, LLC

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/James J. Lynch Reg. No. 50,153/

James J. Lynch
Reg. No. 50,153

Customer Number 00043831

1700 NW 167th Place, Suite 240
Beaverton, OR 97006
503.439.6500

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